

PATENT

11-15-03  
#4

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/005,020  
Filing Date: December 3, 2001  
Applicant: David W. Smithey, et al.  
Group Art Unit: 3743  
Examiner: Christopher Atkinson  
Title: Flattened Tube Heat Exchanger Made From  
Micro-Channel Tubing  
Attorney Docket: 7647-000024

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TECHNOLOGY CENTER R3700

Director of the United States Patent  
and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RESPONSE TO ELECTION/RESTRICTION REQUIREMENT**

Dear Sir:

In response to the Election/Restriction Notice mailed September 9, 2003,  
Applicants request the Examiner to consider the following remarks.

**RESTRICTION**

In the Office Action, the Examiner states that Claims 1-37 as originally filed  
are directed to distinct inventions and require restriction to one of the following inventions:

Group I, Claims 1-24, drawn to a heat exchanger, classified in class 165, subclass 179; or

Group II, Claims 25-37, drawn to a method of manufacturing a heat exchanger, classified in class 29, subclass 890.046

Applicants hereby provisionally elect to continue prosecuting Claims 1-24 of Group I with traverse. However, in light of the remarks below, Applicants respectfully request the Examiner to reconsider and withdraw his restriction requirement.

The Examiner indicated that the two groups of claims are related as a "process of making and product made", and that the inventions are distinct if either (1) the "process as claimed can be used to make other and materially different product", or (2) the "product as claimed can be made by another and materially different process", citing MPEP § 806.05(f). The Examiner alleges that the "product as claimed can be made by another and materially different process such as molding, etching, machining or stamping." Applicants respectfully disagree with the Examiner's characterization.

It is submitted that the heat exchanger claims generally parallel the method of manufacturing a heat exchanger claims. The Examiner is requested to reconsider his position since the heat exchanger claims and the method of manufacturing a heat exchanger claims are so closely related that maintaining them in the same application would not cause undue hardship for the Examiner. Section 803 of the Manual of Patent Examining Procedures states:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

Since the Examiner has not proven that there would be such a “serious burden”, and Applicants submit that there would be none, the Examiner is requested to reconsider the restriction requirement.

While Applicants have elected Claims 1-24 with traverse for initial examination, Applicants reserve the right to file divisional/continuation applications directed to the subject matter of Claims 25-37 in future prosecution.

### **SPECIES ELECTION**

The Examiner further alleges that the claims of the above-titled patent application are directed to three (3) “patentably distinct” species including:

<b>SPECIE</b>	<b>FIGURES</b>
I	1-3
II	4-6
III	7-9

Moreover, the Examiner also alleges that “no claim appears to be generic.” Applicants respectfully traverse this allegation.

The following list sets forth the Applicants’ position on which specie(s) are covered by each of the pending claims.

<b>CLAIMS</b>	<b>SPECIES</b>
1-11	ALL
12-24	I
25-27	ALL
28-30	I
31-37	ALL

Thus, it is Applicants’ opinion that Claims 1-11, 25-27 and 31-37 are generic.

The following reasons are provided to support Applicants' opinion.

### **CLAIMS 1-11**

Independent Claim 1 is directed to a flattened tube heat exchanger (20) having a flattened tube (22) including first and second ends (28 and 30) with a length therebetween and opposite first and second heat transfer surfaces (34 and 36), the tube being shaped into a predetermined configuration with portions of the heat transfer surfaces being adjacent to other portions of the heat transfer surfaces and being spaced apart so that a space (58) exists between each of the adjacent portions of the heat transfer surfaces. The heat exchanger (20) further includes at least one heat transfer fin (24) having first and second ends, and first and second manifolds (26) attached to and in fluid communication with the respective first and second ends (28 and 30) of the tube (22) so that a fluid can pass between the first and second manifolds (26). In this regard, independent Claim 1 covers all three (3) species of the invention, and therefore, is generic. Dependent Claims 2-11 further define the structure and/or function of the flattened tube heat exchanger. Thus, dependent Claims 2-11 are likewise considered to be generic.

### **CLAIMS 25-27 AND 31-37**

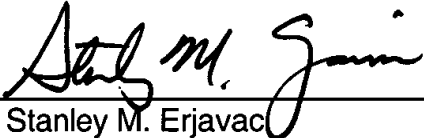
Independent Claim 25 is similar to independent Claim 1 except being directed to a method of making a flattened tube heat exchanger. The claim language used to define this method of making is similarly generic to all three (3) species. Dependent Claims 26-27 and 31-37 further define the structure and/or function of the method for

making a flattened tube heat exchanger. Thus, dependent Claims 26-27 and 31-37 are likewise considered to be generic.

Accordingly, Applicants believe that Claims 1-11, 25-27 and 31-37 are generic. In addition, Applicants elect species I without traverse. <sup>(figs. 1-3) of this paper.</sup> In view of this election, Applicants request the Examiner to consider Claims 12-24 and 28-30 in addition to the generic claims since they are directed to elected species I.

If the Examiner believes that further discussion of Applicants' arguments presented will expedite examination of this application, he is cordially invited to contact Applicants' undersigned attorney at (248) 641-1600.

Respectfully submitted,  
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Dated: September 24, 2003

SME/ld



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HDF/SB/21 based on PTO/SB/21 (08-00)

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# TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	10/005,020
Filing Date	December 3, 2001
First Named Inventor	David W. Smithey, et al.
Group Art Unit	3743
Examiner Name	Christopher Atkinson
Total Number of Pages in This Submission	Attorney Docket Number 7647-000024

## ENCLOSURES (check all that apply)

- ☐ Fee Transmittal Form
  - ☐ Fee Attached
- ☒ Amendment / Response
  - ☐ After Final
  - ☐ Affidavits/declaration(s)
- ☐ Extension of Time Request
- ☐ Express Abandonment Request
- ☐ Information Disclosure Statement
- ☐ Certified Copy of Priority Document(s)
- ☐ Response to Missing Parts/Incomplete Application
  - ☐ Response to Missing Parts under 37 CFR 1.52 or 1.53

- ☐ Assignment Papers (for an Application)
- ☐ Drawing(s)
- ☐ Licensing-related Papers
- ☐ Petition
- ☐ Petition to Convert to a Provisional Application
- ☐ Power of Attorney, Revocation Change of Correspondence Address
- ☐ Terminal Disclaimer
- ☐ Request for Refund
- ☐ CD, Number of CD(s) \_\_\_\_\_

- ☐ After Allowance Communication to Group
- ☐ Appeal Communication to Board of Appeals and Interferences
- ☐ Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
- ☐ Proprietary Information
- ☐ Status Letter

☒ Other Enclosure(s)  
(please identify below):

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Remarks

The Commissioner is hereby authorized to charge any additional fees that may be required under 37 CFR 1.16 or 1.17 to Deposit Account No. 08-0750. A duplicate copy of this sheet is enclosed.

## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Harness, Dickey & Pierce, P.L.C.	Attorney Name	Stanley M. Erjavac	Reg. No.	38,442
Signature					
Date	September 24, 2003				

## CERTIFICATE OF MAILING/TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Director of the U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, or facsimile transmitted to the U.S. Patent and Trademark Office on the date indicated below.

Typed or printed name	Stanley M. Erjavac		
Signature		Date	September 24, 2003

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